

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PACT XPP SCHWEIZ AG	)	
	)	
Plaintiff,	)	C.A. No. 19-1006-RGA
	)	
v.	)	
	)	
INTEL CORPORATION,	)	
	)	
Defendant.	)	

**PROPOSED SCHEDULING ORDER**

This 16 day of July, 2019, the Court having conducted an initial scheduling conference pursuant to Local Rule 16.1(b), and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. Initial Disclosures and Discovery.
  - a. Rule 26(a)(1) Initial Disclosures. The parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) on or before July 15, 2019.
2. Joinder of Other Parties and Amendment of Pleadings. All motions to join other parties, and to amend or supplement the pleadings, shall be filed on or before March 13, 2020, except that the deadline to amend pleadings to add a claim or defense for unenforceability due to inequitable conduct shall be filed on or before June 5, 2020.
3. Discovery.
  - a. Discovery Cut Off. All discovery in this case shall be initiated so that it will be completed on or before October 2, 2020.
  - b. Document Production. Document production shall be substantially complete by May 6, 2020.

c. Requests for Admission. A maximum of 100 requests for admission are permitted for each side. There shall be no limit, however, on the number of requests for admission for the purposes of authenticating documents, although the parties agree to cooperate to reduce, if not eliminate altogether, objections based on authenticity and thus the need to serve requests for admission for authentication purposes.

d. Interrogatories. A maximum of 30 interrogatories, including contention interrogatories, are permitted for each side.

e. Depositions.

i. Limitation on Hours for Fact Deposition Discovery. Each side is limited to a total of 120 hours of taking testimony by deposition upon oral examination of fact witnesses, including third party depositions. The deposition of Martin Vorbach, in his personal capacity, is limited to no more than 14 hours unless otherwise agreed or Ordered by Court. The Parties shall meet and confer on time limits of Rule 30(b)(6) witnesses depending on the number of topics on which a witness is designated to testify. The parties will work together in good faith to avoid the unnecessary duplication of deposition topics where witnesses are deposed in both their Rule 30(b)(6) and Rule 30(b)(1) capacities. Notwithstanding the foregoing, for depositions where a translator is used the parties will work in good-faith to accommodate reasonable requests for additional hours.

ii. Location of Depositions. Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court or by agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be

considered as having filed an action in this Court for the purpose of this provision. Party or representative deponents who live in the United States (including Fed. R. Civ. P. 30(b)(6) designees and party representatives) shall be deposed within 100 miles of their residence or the California offices of their counsel, unless otherwise agreed by the parties.

iii. Expert Deposition Discovery. The parties shall meet and confer concerning the length of expert depositions within 5 days of the exchange of answering expert reports. To the extent the parties cannot reach agreement, the parties shall follow the procedures of subparagraph (f) of this paragraph.

iv. Foreign Witnesses. If a Party wishes to call a non-U.S. resident as trial witness, said party must make a good faith representation identifying the witness on or before May 6, 2020 and the parties shall work together in good faith to arrange the deposition of such witness before the discovery cutoff. For good cause, balanced against any significant prejudice to the other party, a party may seek leave of Court to identify any additional non-U.S. resident trial witnesses after May 6, 2020, and if permitted by the Court to add such witnesses, the parties shall promptly work together to arrange the witnesses' deposition.

f. Discovery Matters and Disputes Relating to Protective Orders and ESI Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order or ESI order, the parties involved in the discovery matter or protective/ESI order dispute shall contact the Court's Case Manager to schedule an in-person conference/argument. Unless otherwise ordered, by no later than forty-eight hours prior to the conference/argument, the party seeking relief shall file with the Court a letter, not to exceed three pages, outlining the issues in dispute and its position on those issues. By no later than twenty-four hours prior to the conference/argument, any party opposing the application for relief may

file a letter, not to exceed three pages, outlining that party's reasons for its opposition. Should any document(s) be filed under seal, a courtesy copy of the sealed document(s) must be provided to the Court within one hour of e-filing the document(s).

If a discovery-related motion is filed without leave of the Court, it will be denied without prejudice to the moving party's right to bring the dispute to the Court through the discovery matters procedures set forth in this Order.

4. Application to Court for Protective Order. The parties shall submit a stipulated Protective Order on or before July 25, 2019 and a stipulated ESI Order on or before August 26, 2019. Should counsel be unable to reach an agreement on a proposed form of order, counsel must follow the provisions of Paragraph 3(f) above.

Any proposed protective order must include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. Papers Filed Under Seal. When filing papers under seal, counsel shall deliver to the Clerk an original and one copy of the papers. A redacted version of any sealed document shall be filed electronically within seven days of the filing of the sealed document.

6. Courtesy Copies. The parties shall provide to the Court two courtesy copies of all briefs and one courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits etc.). This provision also applies to papers filed under seal.

7. Initial Discovery in Patent Litigation.

b. On or before July 15, 2019, the plaintiff shall specifically identify the accused products/methods and the asserted patents defendant allegedly infringes, and produce the file history for each asserted patent.

c. On or before August 30, 2019, defendant shall produce to the plaintiff the core technical documents related to the accused products/methods, including but not limited to operation manuals, product literature, schematics, and specifications.

d. On or before October 11, 2019, plaintiff shall produce to defendant an initial claim chart relating each accused product/method to each asserted claim that each product allegedly infringes. Plaintiff shall initially select no more than 180 claims to chart, and for good cause may seek to substitute or add new claims within the 180 claim limit in a reasonable and prompt period of time after Intel serves its invalidity contentions. Good cause includes but is not limited to prior art produced by Intel after PACT selects its initial 180 claims.

e. On or before November 22, 2019, defendant shall produce to the plaintiff its initial invalidity contentions for each asserted claim, as well as the related invalidating references (e.g., publications, manuals, and patents).

8. Narrowing of the Asserted Claims and Prior Art References.

a. On October 1, 2020, Plaintiff shall serve its Second Election of Asserted Claims, which shall identify no more than 60 total asserted claims.

b. On October 8, 2020, Defendant shall serve its Second Election of Asserted Prior Art.

c. On August 6, 2021, Plaintiff shall serve its Final Election of Asserted Claims.

d. On August 13, 2021, Defendant shall serve its Final Election of Asserted Prior Art.

e. The parties shall meet and confer regarding additional aspects of asserted claim and prior art narrowing, including limits on the number of Defendant's asserted prior art references or combinations, limits on the total number of asserted claims, any per-patent maximums, and any other relevant issues, and the parties shall raise any unresolved issues with the Court pursuant to the provisions of Paragraph 3(f) above so as to be resolved sufficiently ahead of each deadline in this section.

9. Claim Construction Issue Identification. On or before December 20, 2019, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction. On or before January 17, 2020, the parties shall exchange their proposed claim construction of those term(s)/phrase(s). This document will not be filed with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be filed no later than January 31, 2020. The Joint Claim Construction Chart, in Word or WordPerfect format, shall be e-mailed simultaneously with filing to rga\_civil@ded.uscourts.gov. The parties' Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon shall be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

10. Claim Construction Briefing. The Plaintiff shall serve, but not file, its opening brief, not to exceed 20 pages, on March 6, 2020. The Defendant shall serve, but not file, its answering brief, not to exceed 30 pages, on April 3, 2020. The Plaintiff shall serve, but not file, its reply brief, not to exceed 20 pages, on April 24, 2020. The Defendant shall serve, but not file, its sur-reply brief, not to exceed 10 pages, on May 15, 2020. No later than May 22, 2020, the parties shall file a Joint Claim Construction Brief. The parties shall copy and paste their unfiled briefs into one brief, with their positions on each claim term in sequential order, in substantially the form below.

**JOINT CLAIM CONSTRUCTION BRIEF**

- I. Agreed-upon Constructions
- II. Disputed Constructions
  - A. [TERM 1]
    - 1. Plaintiff's Opening Position
    - 2. Defendant's Answering Position
    - 3. Plaintiffs Reply Position
    - 4. Defendant's Sur-Reply Position
  - B. [TERM 2]
    - 1. Plaintiffs Opening Position
    - 2. Defendant's Answering Position
    - 3. Plaintiffs Reply Position
    - 4. Defendant's Sur-Reply Position

Etc. The parties need not include any general summaries of the law relating to claim construction. If there are any materials that would be submitted in an appendix, the parties shall submit them in a Joint Appendix.

11. Hearing on Claim Construction. Beginning at 9:00 a.m. on June 10, 2020, the Court will hear argument on claim construction. Absent prior approval of the Court (which, if it is sought, must be done so by joint letter submission no later than the date on which answering



claim construction briefs are due), the parties shall not present testimony at the argument, and the argument shall not exceed a total of three hours.

12. Disclosure of Expert Testimony.

a. Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before October 29, 2020. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before December 1, 2020. Reply expert reports from the party with the initial burden of proof are due on or before December 18, 2020. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Depositions of experts shall be completed on or before February 12, 2021.

b. Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

13. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before March 26, 2021. Any response thereto shall be filed within 28 days. Any reply to the response shall be filed within 21 days of the response. No case dispositive motion under Rule 56 may be filed more than ten days before the above date without leave of the Court.



14. Applications by Motion. Except as otherwise specified herein, any application to the Court shall be by written motion. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

15. Pretrial Conference. On September 3, 2021, the Court will hold a Rule 16(e) final pretrial conference in Court with counsel beginning at 9:00 a.m. The parties shall file a joint proposed final pretrial order in compliance with Local Rule 16.3(c) no later than 5:00 p.m. on the third business day before the date of the final pretrial conference. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d) for the preparation of the proposed joint final pretrial order.

16. Motions in Limine. Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to three *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three pages of argument and may be opposed by a maximum of three pages of argument, and the party making the *in limine* request may add a maximum of one additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three page submission (and, if the moving party, a single one page reply). No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

17. Jury Instructions, Voir Dire, and Special Verdict Forms. Where a case is to be tried to a jury, pursuant to Local Rules 47.1(a)(2) and 51.1, the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms no later than 5:00 p.m. on the third business day before the date of the final pretrial

conference. The parties shall submit simultaneously with filing each of the foregoing four documents in Word or WordPerfect format to rga\_civil@ded.uscourts.gov.

18. Trial. This matter is scheduled for a five-day jury trial beginning at 9:30 a.m. on September 20, 2021, with the subsequent trial days beginning at 9:30 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

19. ADR Process. This matter is referred to a magistrate judge to explore the possibility of alternative dispute resolution.

  
UNITED STATES DISTRICT JUDGE